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Amboy Care Center and 1115 Nursing Home and Service Employees Union-New Jersey A.<sup>1</sup> A Division of 1115 District Council. Case 22–CA– 21802

October 10, 1997

# **DECISION AND ORDER**

## By Chairman Gould and Members Fox and Higgins

Pursuant to a charge filed on January 15, 1997, the General Counsel of the National Labor Relations Board issued a complaint on April 14, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 22–RC–11068. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On August 22, 1997, the General Counsel filed a Motion for Summary Judgment. On August 26, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 16, 1997, the Respondent filed a response and on September 17, 1997, the Union filed a letter in support of the General Counsel's motion.

## Ruling on Motion for Summary Judgment

In its answer and response the Respondent attacks the validity of the certification on the basis that the Board erred in the representation proceeding when it set aside the first election and directed a second election. See *Amboy Care Center*, 322 NLRB 207 (1996). There was no objection to the second election. The Respondent also argues that because the Union affiliated with the Service Employees International Union after the certification issued, there exist questions concerning the process of the affiliation and whether substantial continuity of representative exists. Therefore, the Respondent argues that a hearing is necessary to develop an evidentiary record and that summary judgment is inappropriate.

With the exception of the affiliation issue, discussed below, all representation issues raised by the Respondent were or could have been litigated in the prior rep-

<sup>1</sup> Hereinafter referred to as 1115 NJ-A or the Union.

resentation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We find it unnecessary to consider the Respondent's contention that the Union's affiliation with the Service Employees International Union destroyed continuity of representation so as to relieve the Respondent from its recognitional obligation.<sup>2</sup> In its opposition to the Motion for Summary Judgment, the Respondent appears to accept the General Counsel's assertion that the affiliation was approved in March 1997. This was 3 months after the Union made its recognitional demand by letter dated December 10, 1996, and more than a month after the Respondent had been served with the January 21, 1997 charge alleging as an unfair labor practice its failure to respond to the bargaining demand. In these circumstances, we find it essentially undisputed that the Respondent engaged in an unlawful failure and refusal to bargain with the Union within a reasonable time after the demand, and thereby violated Section 8(a)(5) and (1) of the Act.<sup>3</sup>

We also find that there are no issues requiring a hearing with respect to the Union's request for information. The Union requested the following information from the Respondent:

- 1. A list of all bargaining unit employees arranged by classification and shift including names, addresses, phone numbers, present wage rates, dates of hire and average number of hours worked per week that each has worked during the last 12 months.
- 2. The total number of overtime hours paid each employee for the last 12 months.
- 3. A copy of the staffing patterns or schedules for all units including a shift-by-shift breakdown for each classification in each unit as well as the staffing patterns on weekends per unit.

<sup>&</sup>lt;sup>2</sup> See, e.g., *Sullivan Bros. Printers*, 317 NLRB 561 (1995), enfd. 99 F.3d 1217 (1st Cir. 1996) (collecting cases).

<sup>&</sup>lt;sup>3</sup>The Respondent's denials do not suffice to place in dispute the Union's labor organization status or the appropriateness of the unit, because these were stipulated in the underlying representation proceeding and, as stated above, it has already had its opportunity for hearing on the election objections issues that were resolved in the representation proceeding. It does not deny receiving the attached letter demanding bargaining, and it was formally served with notice of the unfair labor practice charge. Whether the Respondent was relieved of the bargaining obligation by subsequent events can more appropriately be developed in a supplemental proceeding. See *F. W. Woolworth*, 305 NLRB 775 (1991) (supplemental decision resolving continuity of representation issue after the initial obligation was established through a test of the certification.

- 4. A copy of all current job descriptions.
- 5. A copy of all current work rules.
- 6. A copy of all policies related to employment conditions and employees' benefits including a copy of all employee handbooks and manuals.
- 7. Copies of any Summary Plan Description Booklets or materials for all insurance plans including premium rates and contribution rates for all coverages for each of the last 3 years; and Pension Plans.
- 8. Names of employees enrolled in each insurance category (employee only, employee plus 1, family, etc.) for each Insurance Plan and Pension Plan.
- 9. A copy of the Medicare and Medicaid cost computation for the last 2 years and submitted to the State Department of Health; any response made thereto; issuance of any memorandum which sets forth the reimbursement rate established, changed or promulgated which rate was in effect during said 2-year period.

Although the Respondent's answer denies that the foregoing information is necessary and relevant to the Union's duties as the exclusive collective-bargaining representative of the unit, it is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Maple View Manor*, 320 NLRB 1149 (1996); *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.<sup>4</sup>

On the entire record, the Board makes the following

#### FINDINGS OF FACT

### I. JURISDICTION

At all material times, the Respondent, a New Jersey corporation, with a facility in Perth Amboy, New Jersey, has been engaged in the operation of a nursing home providing inpatient health care services. During the 12-month period preceding the issuance of the complaint, the Respondent in conducting its business operations described above, derived gross revenues in excess of \$100,000 and purchased and caused to be delivered to its New Jersey facility, goods valued at more than \$5000 directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. The Certification

Following a second election held November 14, 1996, the Union was certified on November 26, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time service and maintenance employees, including nurses aides, laundry employees, housekeepers, and dietary employees employed by the Employer at the Perth Amboy, New Jersey location, but excluding all licensed practical nurses, registered nurses, professional employees, office clerical employees, guards and supervisors as defined by the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

## B. Refusal to Bargain

Since December 10, 1996, the Union has requested the Respondent to bargain and to furnish information, and, since December 10, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

## CONCLUSION OF LAW

By refusing on and after December 10, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

<sup>&</sup>lt;sup>4</sup> Member Higgins did not participate in the underlying representation proceeding. However, he agrees with his colleagues that no new matters are appropriately raised in the instant "technical" 8(a)(5) case and that summary judgment is therefore appropriate.

### **ORDER**

The National Labor Relations Board orders that the Respondent, Amboy Care Center, Perth Amboy, New Jersey, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with 1115 Nursing Home and Service Employees Union-New Jersey A, a division of 1115 District Council, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full time and regular part time service and maintenance employees, including nurses aides, laundry employees, housekeepers, and dietary employees employed by the Employer at the Perth Amboy, New Jersey location, but excluding all licensed practical nurses, registered nurses, professional employees, office clerical employees, guards and supervisors as defined by the Act.

- (b) Furnish the Union information that it requested on December 10, 1996.
- (c) Within 14 days after service by the Region, post at its facility in Perth Amboy, New Jersey, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current

employees and former employees employed by the Respondent at any time since January 15, 1997.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 10, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

# **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with 1115 Nursing Home and Service Employees Union-New Jersey A, a division of 1115 District Council, as the exclusive representative of the employees in the bargaining unit and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full time and regular part time service and maintenance employees, including nurses aides, laundry employees, housekeepers, and dietary employees employed by us at our Perth Amboy, New Jersey location, but excluding all licensed practical nurses, registered nurses, professional employees, office clerical employees, guards and supervisors as defined by the Act.

WE WILL furnish the Union the information it requested on December 10, 1996.

AMBOY CARE CENTER

<sup>&</sup>lt;sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."